IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

OP.No. 9468 of 2003(B)

PETITIONER:

P.C.VIJAYAKUMAR, DEPUTY DEVASWOM COMMISSIONER, TRAVANCORE DEVASWOM BOARD, VAICKOM.

BY ADV. SRI.V.G.ARUN
SRI.T.R.HARIKUMAR

RESPONDENTS:

THE TRAVANCORE DEVASWOM BOARD, TRIVANDRUM, REPRESENTED BY ITS SECRTARY, NANTHANCODE, TRIVANDRUM.

BY ADV. SRI.M.K.CHANDRAMOHAN DAS, SC, TDB

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 22/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP NO.9468/2003

ORDERS IN CMP NO.16468/2003 & IA NO.8301 OF 2004 IN OP NO.9468/2003

DISMISSED.

22/6/2007 **SD/-K.S.RADHAKRISHNAN, JUDGE.**

SD/-ANTONY DOMINIC, JUDGE.

//TRUE COPY//

OP NO.9468/2003

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF THE MEMO OF CHARGES NO.ROC.1940/90/SAB.DATED 25.10.1990.

EXT.P2: TRUE CPY OF THE REPORT ON ENQUIRY NO.ROC.NO.5/90/EC DATED 14.3.1991.

EXT.P3: TRUE COPY OF THE SHOW CAUSE NOTICE NO.ROC.1940/O/SAB/EST DATED 20.4.1991.

EXT.P4: TRUE COPY OF THE EXPLANATION SUBMITTED BY THE PETITIONER DATED 24.6.1991.

EXT.P5: TRUE COPY OF THE NOTICE NO.ROC.1940/90/EST. 1 DATED 10.2.2003.

//TRUE COPY//

K.S.RADHAKRISHNAN & ANTONY DOMINIC, JJ.

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O.P NO.9468 OF 2003

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Dated this the 22nd day of June, 2007

J U D G M E N T

Radhakrishnan, J.

This OP has been preferred seeking a writ of certiorari to quash Ext.P5 notice dated 10.02.03 issued by the Board to show cause why an amount of Rs.1,34,119.50 shall not be recovered from the petitioner towards the loss sustained by the Board in connection with the purchase of jaggery. We notice that Ext.P5 notice was issued after conducting an elaborate enquiry. Enquiry report has been produced as Ext.P2. We have gone through the Enquiry Report. Enquiry Officer examined documentary as well as oral evidence. PWs 1 to 7 were examined on the side of the Board and DWs 1 to 4 were examined on the side of the delinquent. Statements of Sri.Radhakrishna Kurup and Sri.Muraleedharan Nair were also recorded. After conducting a very elaborate enquiry, it was found that the petitioner and three others were guilty of the charges levelled against them. In order to recover the loss sustained by the Board, Ext.P5 notice was issued, which

is under challenge in this original petition.

2. Learned counsel for the petitioner submitted that the statement submitted by Sri.Radhakrishna Kurup and Sri.Muraleedharan Nair would show that the missing of the jaggery were later discovered at the stores and has been credited in the accounts and hence the finding that the petitioner and others are guilty is not true. We have perused the enquiry report. Enquiry officer has examined the evidence of PW7 and after appreciating the oral and documentary evidence as well as the statements filed, the Enquiry Officer came to the conclusion that there are reasons to infer that the so called discovery of 15735 kg. of pandy sarkara is a mischievous story, without any factual basis. On the whole, we are of the view that the enquiry was properly conducted after giving opportunity to the parties to adduce evidence. Learned counsel for the petitioner could not establish that the enquiry was vitiated by malafide or by any extraneous reasons. Procedural formalities have been applied well by the enquiry officer while conducting the enquiry.

We are now informed by the counsel for the Board that subsequently Ext.P5 has been modified and another notice dated

5/1/06 was served on the petitioner informing that the liability has been apportioned and the petitioner's liability will come to Rs.53,647.80. That notice has not been challenged before us. Since we find no infirmity in Ext.P5 notice, it is open to the Board to recover the apportioned amount from the petitioner. With the above observation, OP is dismissed.

K.S.RADHAKRISHNAN, JUDGE.

ANTONY DOMINIC, JUDGE.

Rp